SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 930

JOHN J. BOYLE, County Treasurer of Cuyahoga County; JOHN A. ZANGERLE, County Auditor of Cuyahoga County; BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO,

Appellants,

vs.

THE UNITED STATES OF AMERICA and FEDERAL PUBLIC HOUSING AUTHORITY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

Frank T. Cullitan,
Prosecuting Attorney,
Cuyahoga County;

Ralph W. Edwards,
Assistant Prosecuting Attorney,
Cuyahoga County,
Counsel for Appellants.

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil No. 21897

Filed: C. B. Watkins, Clerk U. S. District Court NDO, Feb. 11, 1944, 11:02 A. M.

UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY,

Plaintiffs-Appellees,

vs.

JOHN J. BOYLE, COUNTY TREASURER OF CUYAHOGA COUNTY, OHIO; JOHN A. ZANGERLE, COUNTY AUDITOR OF CUYAHOGA COUNTY, OHIO; BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, AND CITY OF CLEVELAND,

Defendants-Appellants.

JURISDICTIONAL STATEMENT

The defendants-appellants having presented, this day, their petition for appeal, now file this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review

the final judgment in question and should exercise jurisdiction in this case.

A. The statutory provision believed to sustain the jurisdiction.

This appeal is prosecuted from a final order, judgment or decree which permanently restrains the defendants, tax assessing and tax levying officials of Cuyahoga County and the City of Cleveland, in the State of Ohio, from taking any action to assess, levy, or collect taxes on certain lands owned by the plaintiffs in said city, as provided and required by the laws of Ohio known as General Code Sections 5328 and 5625-3, on the grounds that these statutes and proceedings thereunder contravene the Constitution of the United States.

The final judgment here appealed from was entered in the District Court of the United States for the Northern District of Ohio on November 19th, 1943, by a statutory court consisting of one circuit and two district Judges especially convoked under and by virtue of the provisions of Section 266 (amended) of the Judicial Code (28 U. S. C. A. 380). The said statute concludes as follows:

> "and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

It is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment in question by virtue of the express provisions last above set forth.

B. The State Statutes and administrative order involved.

The plaintiffs' complaint sets forth that the lands and improvements of the United States of America described therein were assessed for taxation by the county defendants

in pursuance of the Statutes of Ohio known as General Code Section 5328 providing therefor and requiring that all lands in the State shall be subject to taxation, except such as shall have been exempted therefrom pursuant to the laws of Ohio, and General Code Section 5625-3 authorizing such county and city to levy taxes on such real property.

The acts of the officers in assessing such lands and subjecting them to taxation were in pursuance of such acts requiring them so to do. The complaint contends that such acts in requiring the taxing officers to assess and levy taxes against the premises owned by the United States of America and acquired and used for the purpose of low cost housing, contravenes the Constitution of the United States of America.

C. The date of the judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.

The final judgment here sought to be reviewed was entered and spread of record on November 19, 1943. A motion for a new trial was duly and seasonably filed in said cause and was overruled on January 18, 1944.

The petition for appeal herein was presented and filed on February 9th, 1944.

D. Statement showing that the nature of the case and of the rulings of the Court was such as to bring the case within the jurisdictional provisions relied on.

The United States of America and the Federal Public Housing Authority, a government corporation wholly owned by the United States, originally created as the United States Housing Authority under Section 3 of the Act of Congress of September 1, 1937 (50 Stat. 888) and now known as the Federal Public Housing Authority by reason of Executive Order No. 9070 dated February 27, 1942, filed

a complaint against the county defendants, officers of the County of Cuyahoga, Ohio, charged by the laws of the State of Ohio with the duty of listing and assessing lands for taxation and of levying and collecting taxes thereon, and against defendant the City of Cleveland, a taxing subdivision of said county, setting forth that the United States was the owner of certain lands and improvements in said city, acquired and used by it for the purpose of providing low cost housing pursuant to the "United States Housing Act of 1937" passed September 1, 1937, 50 Stat. 888, 42 U. S. C. 1401-1430."

That said lands of the plaintiffs were assessed for taxation and taxes levied thereon by the defendants in pursuance of the laws of Ohio known as General Code Sections 5328 and 5625-3 providing therefor and requiring that all lands in the State shall be subject to taxation except such as shall have been exempted therefrom pursuant to the laws of Ohio.

The complaint contends that such provision of the laws of Ohio requiring the taxing authorities, defendants herein, to assess and levy taxes against the lands in said city so owned by the plaintiffs for the purpose of providing low cost housing, contravenes the Constitution of the United States of America.

Both interlocutory and permanent injunctions were sought restraining the defendants from assessing said lands for taxation, from taking any action to enforce the payment of taxes levied thereon and from levying any taxes on the same so long as it continued to be owned by the plaintiffs or either of them, and that the taxes levied be declared null and void.

The case came on for a hearing on the plaintiffs' motion for a temporary injunction, before a Special District Court of three judges, pursuant to Section 266 of the Judicial Code, the parties submitted the case for entry of a final order upon the pleadings and stipulation of the parties.

This appeal is prosecuted from the final order so entered allowing a permanent injunction as prayed for in said complaint.

E. Statement of the grounds upon which it is contended that the questions involved are substantial.

The question presented on this appeal is whether lands in Ohio acquired by the United States of America or the Federal Public Housing Authority for low cost housing purposes and improved by the erection of dwellings thereon are immune from taxation by the State.

It is respectfully submitted that the question is substantial because it affects the revenues available to the State and its political subdivisions for the operation of the governmental functions and the performance of duties thrust upon them by such housing developments. It is submitted also that the question presented is substantial in that it likewise affects every other State.

F. Cases believed to sustain the jurisdiction.

The following decision of this Court is believed to sustain the jurisdiction of the Supreme Court of the United States on a direct appeal to review the final order, judgment or decree here in question:

Query, etc. v. *United States, et al.*, 318 U. S. 486.

In that case it was held:

> "An appeal from a decree of injunction granted by a three-judge district court under Federal Code Sec. 266, lies directly to this Court, not to the Circuit Court of Appeal."

G. Statement respecting opinions.

The court below delivered both a majority and a dissenting opinion, and made certain findings of facts and con-

clusions of law in connection with the entry of the decree in question. Copies of these opinions, findings and conclusions, and of the final decree herein, are reproduced as Appendices A, B and C and attached to this jurisdictional statement.*

Respectfully submitted,

FRANK T. CULLITAN,
Prosecuting Attorney
of Cuyahoga County, Ohio,
And
RALPH W. EDWARDS,
Assistant Prosecuting Attorney,
Attorneys for Defendants-Appellants,
Criminal Courts Building,
Cleveland, Ohio.

* (Clerk's Note) The opinions, findings of fact and conclusions of law are printed as appendices to the jurisdictional statement in the case of *City of Cleveland, v. U. S., et al.*, No. 929 October Term, 1943 and are not duplicated here.